

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

No. 3:16cr373

v.

(Judge Munley)

CHARLES J. SENKE,
Defendant

FILED
SCRANTON

ORDER

SEP 13 2017

Background

PER 
DEPUTY CLERK

The government has filed a motion in limine to preclude the defendant from using an "entrapment" defense. In support of its motion, the government submitted a CD to the court including "a spreadsheet of continuing text messages between the two [the defendant and the undercover agent] exchanged via cell phones." (Doc. 51, Govt's Motion at 13).

The spreadsheet, however, does not appear to be complete. It contains no text messages from February 1, 2015. According to the Affidavit of Probable Cause, there were messages sent on this date. These messages may be relevant to the entrapment defense and also to the element of intent. Apparently on this date, the defendant told the undercover agent that he would come see him, but not to have sex. (Doc. 49-1, Aff. of Probable Cause at 5). The government will thus be directed to submit to the court full transcripts of the

communications between the agent and the defendant, without the deletion of any exculpatory evidence.

Additionally, the government's brief indicates that the defendant sent numerous photographs to the agent "depicting other young boys engaged in sexual acts." (Doc. 51, Govt. Br. at 13). The government further indicates that "[b]ecause the pornographic pictures sent by the defendant to the [investigator] are questionably child pornography, the Government has not recreated them or included them on the CD." (Id. n. 3).

A review of the matters submitted in this case reveals no other mention of these photographs. Notably, such photos are not mentioned in the affidavit of probable cause, where the investigator laid out his case.¹ Without the photos and without more of a description of the "sexual acts" allegedly found in the photos the court cannot make a fully reasoned decision on the entrapment defense.

Based upon the above, the government is directed to provide full transcripts of the text messages it has in its possession regarding the defendant and the investigatory office and an explanation of the photographs it discusses

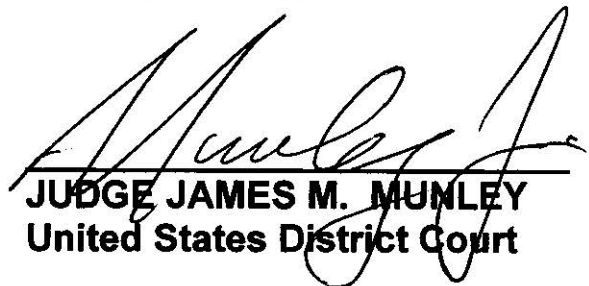
¹ The affidavit of probable cause discusses photographs of a young adult male in various nude poses and "additional pictures of the same adult male posing with US currency and kissing the young adult male." (Doc. 49-1, Aff. of Probable Cause at 4). No photos of young boys engaged in sexual acts are discussed. The investigator does not mention any sexual acts between young boys (or anyone) depicted in the photos.

as "depicting other young boys engaged in sexual acts." The explanation should explain when the photographs were sent and describe the content of the pictures with more specificity than "sexual acts". This material is due by 9:00 o'clock a.m., Thursday September 14, 2017.

The Clerk of Court is directed to serve this order on the defendant at his place of incarceration.

Date: _____

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court